

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 03-7020**

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GARY IVAN TERRY,

Plaintiff - Appellant,

versus

DARLENE A. VELTRI, Warden; JEFF TILLEY,  
Discipline Hearing Officer; RODNEY TABRON,  
Unit Manager; TONY PARKS, Senior Correctional  
Officer; THERESA WOODS, Senior Correctional  
Officer,

Defendants - Appellees.

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Appeal from the United States District Court for the Eastern  
District of North Carolina, at Raleigh. James C. Fox, Senior  
District Judge. (CA-02-697-5-F)

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Submitted: January 30, 2004

Decided: February 24, 2004

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Before WIDENER, WILLIAMS, and TRAXLER, Circuit Judges.

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Affirmed as modified by unpublished per curiam opinion.

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Gary Ivan Terry, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit.  
See Local Rule 36(c).

PER CURIAM:

Gary Ivan Terry appeals the district court's order dismissing his complaint filed pursuant to Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971), for failure to exhaust administrative remedies. The district court properly required exhaustion of administrative remedies under 42 U.S.C. § 1997e(a) (2000). Because Terry did not demonstrate to the district court that he had exhausted administrative remedies or that such remedies were not available, the court's dismissal of the action was not an abuse of discretion. Terry may refile his action after exhaustion; therefore, we modify the dismissal to be without prejudice. See 28 U.S.C. § 2106 (2000). Accordingly, we grant leave to proceed in forma pauperis and affirm the district court's order as modified. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED AS MODIFIED